

Jul 19, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TERESA H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

No. 2:22-CV-00268-SAB

**ORDER AFFIRMING DECISION OF
COMMISSIONER**

Plaintiff brings this action seeking judicial review of the Commissioner of Social Security's final decision denying her application for social security benefits. Plaintiff is represented by Chad L. Hatfield. The Commissioner is represented by Edmund Darcher, Erin Highland, and Brian M. Donovan. Pending before the Court are Plaintiff's Opening Brief, ECF No. 14, the Commissioner's Brief, ECF No. 16, and Plaintiff's Reply Brief, ECF No. 17.

After reviewing the administrative record, briefs filed by the parties, and applicable case law, the Court is fully informed. For the reasons set forth below, the Court affirms the Commissioner's decision.

I. Jurisdiction

On August 25, 2017, Plaintiff filed an application for Title II disability insurance benefits, with the onset date of July 12, 2017. Plaintiff's application was

1 denied initially and on reconsideration. An ALJ found Plaintiff was not disabled
2 and Plaintiff appealed that decision to the Eastern District of Washington, which
3 remanded for additional proceedings.

4 On July 20, 2022, a hearing was held by telephone. Plaintiff participated and
5 was represented by Chad Hatfield. On September 9, 2022, the ALJ issued a ruling
6 again finding that Plaintiff was not disabled before July 14, 2020, but finding
7 Plaintiff became disabled on that date because her age category changed. Plaintiff
8 filed a timely appeal on November 8, 2022. ECF No. 1. The matter is before this
9 Court pursuant to 42 U.S.C. § 405(g).

10 II. Five-Step Sequential Evaluation Process

11 The Social Security Act defines disability as the “inability to engage in any
12 substantial gainful activity by reason of any medically determinable physical or
13 mental impairment which can be expected to result in death or which has lasted or
14 can be expected to last for a continuous period of not less than twelve months.” 42
15 U.S.C. § 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be under
16 a disability only if their impairments are of such severity that the claimant is not
17 only unable to do their previous work, but cannot, considering claimant’s age,
18 education, and work experiences, engage in any other substantial gainful work that
19 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The
20 Commissioner has established a five-step sequential evaluation process to
21 determine whether a person is disabled in the statute. *See* 20 C.F.R.
22 § 404.1520(a)(4)(i)–(v), 416.920(a)(4)(i)–(v).

23 **Step One:** Is the claimant engaged in substantial gainful activities? *Id.*
24 § 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work done for
25 pay and requires compensation above the statutory minimum. *Keyes v. Sullivan*,
26 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in substantial
27 activity, benefits are denied. *Id.* § 404.1520(b), 416.920(b). If the claimant is not,
28 the ALJ proceeds to step two.

1 **Step Two:** Does the claimant have a medically-severe impairment or
2 combination of impairments? *Id.* § 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A severe
3 impairment is one that lasted or must be expected to last for at least 12 months and
4 must be proven through objective medical evidence. *Id.* §§ 404.1509, 416.909. If
5 the claimant does not have a severe impairment or combination of impairments, the
6 disability claim is denied. *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
7 impairment is severe, the evaluation proceeds to the third step.

8 **Step Three:** Does the claimant's impairment meet or equal one of the listed
9 impairments acknowledged by the Commissioner to be so severe as to preclude
10 substantial gainful activity? *Id.* § 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the
11 impairment meets or equals one of the listed impairments, the claimant is
12 conclusively presumed to be disabled. *Id.* § 404.1520(d), 416.920(d). If the
13 impairment is not one conclusively presumed to be disabling, the evaluation
14 proceeds to the fourth step.

15 Before proceeding to the fourth step, the ALJ must first determine the
16 claimant's residual functional capacity (RFC). An individual's residual functional
17 capacity is their ability to do physical and mental work activities on a sustained
18 basis despite limitations from their impairments. *Id.* § 404.1545(a)(1),
19 416.945(a)(1). The RFC is relevant to both the fourth and fifth steps of the
20 analysis.

21 **Step Four:** Does the impairment prevent the claimant from performing work
22 they have performed in the past? *Id.* § 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the
23 claimant is able to perform their previous work, they are not disabled. *Id.*
24 § 404.1520(f), 416.920(f). If the claimant cannot perform this work, the evaluation
25 proceeds to the fifth and final step.

26 **Step Five:** Is the claimant able to perform other work in the national
27 economy in view of their age, education, and work experience? *Id.*
28 § 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the

1 claimant to establish a prima facie case of entitlement to disability benefits. *Tackett*
2 *v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant
3 establishes that a physical or mental impairment prevents him from engaging in her
4 previous occupation. *Id.* At step five, the burden shifts to the Commissioner to
5 show that the claimant can perform other substantial gainful activity. *Id.*

6 **III. Standard of Review**

7 The Commissioner's determination will be set aside only when the ALJ's
8 findings are based on legal error or are not supported by substantial evidence in the
9 record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing
10 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
11 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance,"
12 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial
13 evidence is "such relevant evidence as a reasonable mind might accept as adequate
14 to support a conclusion." *Richardson*, 402 U.S. at 401.

15 A decision supported by substantial evidence will be set aside if the proper
16 legal standards were not applied in weighing the evidence and making the decision.
17 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).
18 An ALJ is allowed "inconsequential" errors as long as they are immaterial to the
19 ultimate nondisability determination. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d
20 1050, 1055 (9th Cir. 2006). The court must uphold the ALJ's denial of benefits if
21 the evidence is susceptible to more than one rational interpretation, one of which
22 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d
23 1190, 1193 (9th Cir. 2004). It "must consider the entire record as a whole,
24 weighing both the evidence that supports and the evidence that detracts from the
25 Commissioner's conclusion, and may not affirm simply by isolating a specific
26 quantum of supporting evidence." *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
27 2017) (quotation omitted). "If the evidence can support either outcome, the court
28 may not substitute its judgment for that of the ALJ." *Matney*, 981 F.2d at 1019.

IV. Statement of Facts

The facts have been presented in the administrative record, the ALJ's decision, and the briefs to this Court. Only the most relevant facts are summarized here.

Plaintiff was 51 years old as of her alleged onset date. She has some college education and received a certificate in dental assisting. She has prior work in the medical field, including being a unit coordinator in an emergency room for 13 years. She last worked in 2017 and testified that she left work due to her mental impairments, which were causing her to make mistakes, miss work, and have panic attacks while working. She has also struggled with symptoms of fibromyalgia, which has further exacerbated her mental health.

Plaintiff participates in yoga, water aerobics, and works out three times a week.

V. The ALJ's Findings

The ALJ issued an opinion affirming denial of benefits. AR 518-534. At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since July 12, 2017, the alleged onset date. AR 520.

At step two, the ALJ identified the following severe impairments: fibromyalgia, lumbar and cervical degenerative disc disease, major depressive disorder, panic disorder, attention-deficit hyperactivity disorder, and post-traumatic stress disorder. AR 521.

At step three, the ALJ found that Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments. AR 522.

The ALJ concluded that Plaintiff has an RFC to perform:

a full range of light work as defined in 20 CFR 404.1567(b) except: she can frequently reach in all directions, balance, and push and pull with the upper extremities; she can occasionally stoop, kneel, crouch,

1 crawl, and climb ramps or stairs but can never climb ladders, ropes, or
2 scaffolds; she can have no exposure to hazards (e.g., unprotected
3 heights, moving mechanical parts); she is limited to simple, routine
4 work with a reasoning level of 2 or less; she can have occasional,
5 superficial contact with the public and co-workers; she needs a
6 routine, predictable work environment with no more than occasional
7 changes; and she cannot perform fast-paced work.

8 AR 524.

9 At step four, the ALJ found that Plaintiff was not capable of performing past
10 relevant work. AR 532.

11 At step five, the ALJ found that before July 14, 2020, there were other jobs
12 that existed in significant numbers in the national economy that Plaintiff could
13 have performed in the national economy, including representative positions such as
14 laundry worker, price marker, and mail clerk. AR 534. Consequently, the ALJ
15 found that Plaintiff was not disabled between July 12, 2017 and July 14, 2020.

16 **VI. Discussion**

17 **A. Evaluation of the Medical Opinions**

18 In evaluating medical opinion evidence, the ALJ considers the
19 persuasiveness of each medical opinion and prior administrative medical finding
20 from medical sources. 20 C.F.R. § 416.920c(a), (b). The ALJ is required to
21 consider multiple factors, including supportability, consistency, the source's
22 relationship with the claimant, any specialization of the source, and other factors
23 (such as the source's familiarity with other evidence in the file or an understanding
24 of Social Security's disability program). *Id.* § 416.920c(c)(1)–(5). Supportability
25 and consistency of an opinion are the most important factors, and the ALJ must
26 articulate how they considered those factors in determining the persuasiveness of
27 each medical opinion or prior administrative medical finding. *Id.* § 416.920c(b)(2).
28 The ALJ may explain how they considered the other factors, but is not required to
do so, except in cases where two or more opinions are equally well-supported and
consistent with the record. *Id.*

1 Supportability and consistency are further explained in the regulations:

2 (1) *Supportability*.

3 The more relevant the objective medical evidence and supporting
4 explanations presented by a medical source are to support his or her medical
5 opinion(s) or prior administrative medical finding(s), the more persuasive
6 the medical opinions or prior administrative medical finding(s) will be.

7 (2) *Consistency*.

8 The more consistent a medical opinion(s) or prior administrative medical
9 finding(s) is with the evidence from other medical sources and nonmedical
10 sources in the claim, the more persuasive the medical opinion(s) or prior
11 administrative medical finding(s) will be.

12 *Id.* §§ 404.1520c(c); 416.920c(c).

13 Here, the ALJ reasonably evaluated the statements from Rebecca McManus,
14 LMHCA, Pamela Wilson, LMHCA, and Derek Hennessy, PA-C.

15 **a. Rebecca McManus, LMHCA**

16 Rebecca McManus, LMHCA began counseling sessions with Plaintiff in
17 May 2019. McManus drafted a letter in February 2019 that discussed Plaintiff's
18 description of her symptoms and Plaintiff's self-assessment regarding her
19 functionality.

20 The ALJ concluded McManus was not an acceptable medical source and the
21 opinion consisted simply of an agreement with what Plaintiff reported. The ALJ
22 noted that McManus did not specifically rely on professional judgment, and found
23 the statement to not be persuasive as a result.

24 The ALJ reasonably evaluated McManus' letter and did not err in
25 concluding that it was not persuasive.

26 **b. Pamela Wilson**

27 Pamela Wilson began treating Plaintiff in February 2022. She provided an
28 evaluation in July 2022.

The ALJ did not evaluate this opinion. This was reasonable as the relevant
time period was between July 2017 and July 2020. No where in the opinion did

1 Wilson indicate that the identified limitations related back prior to 2020. The ALJ
2 was not required to consider Wilson’s opinion and therefore it was not error to not
3 address the limitations identified in Wilson’s report.

4 **c. Derek Hennessy, PA-C**

5 Derek Hennessy began treating Plaintiff in September 2021. He concluded
6 that Plaintiff’s prognosis was poor with limited range of motion and decreased
7 mobility. Hennessy concluded that Plaintiff was severely limited and was unable to
8 perform the demands of even sedentary work. Notably, Hennessy concluded that
9 the limitations in the report existed since at least July 2012 and this was based on
10 the chart review of previous evaluations and treatments.

11 The ALJ found that Hennessy’s opinion was not persuasive in assessing
12 Plaintiff’s functioning for the relevant period, given that Hennessy had only treated
13 Plaintiff since September 2021 and other acceptable medical sources were
14 consistently opining that Plaintiff was not precluded from work or was not limited
15 to sedentary exertion. The ALJ’s evaluation of Hennessy’s opinion was reasonable
16 and supported by substantial evidence.

17 **B. Plaintiff’s Subjective Complaints**

18 Plaintiff argues the ALJ erred in discounting her subjective symptoms of her
19 physical and mental health conditions.

20 In determining whether a claimant’s testimony regarding subjective pain or
21 symptoms is credible, the ALJ engages in a two-step analysis. *Garrison*, 759 F.3d
22 at 1014. “First, the ALJ must determine whether the claimant has presented
23 objective medical evidence of an underlying impairment which could reasonably
24 be expected to produce the pain or other symptoms alleged.” *Id.* (citation and
25 quotation omitted). If the claimant satisfies the first step of the analysis, and there
26 is no evidence of malingering, the ALJ can reject the claimant’s testimony about
27 the severity of their symptoms “only by offering specific, clear and convincing
28 reasons for doing so.” *Id.* (citation and quotation omitted). “This is not an easy

1 requirement to meet: The clear and convincing standard is the most demanding
2 required in Social Security cases.” *Id.* (citation and quotation omitted). That said, if
3 the ALJ’s credibility finding is supported by substantial evidence in the record, the
4 Court may not engage in second-guessing. *Thomas v. Barnhart*, 278 F.3d 947, 959
5 (9th Cir. 2002).

6 Here, the ALJ reasonably evaluated Plaintiff’s subjective symptom
7 testimony. The ALJ provided clear and convincing reasons for finding that
8 Plaintiff’s testimony regarding her limitations was not entirely credible. The Court
9 notes that the ALJ addressed the errors previously found by this Court, provided an
10 independent analysis of Plaintiff’s symptom testimony and did not simply repeat
11 the prior findings. Here, the ALJ reasonably interpreted the record and the ALJ’s
12 findings are supported by substantial evidence.

13 C. Listing 14.09D

14 The ALJ did not err at step three in failing to address Listing 14.09D in the
15 decision. Plaintiff did not present evidence and never explained how her conditions
16 satisfied Listing 14.09D. Even if the ALJ erred in not addressing it in the decision,
17 such error would be harmless because Plaintiff has not shown how she meets the
18 criteria of the Listing.

19 VII. Conclusion

20 Substantial evidence supports the ALJ’s decision that Plaintiff was not
21 disabled for the period of July 12, 2017 and July 14, 2020.

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Accordingly, **IT IS HEREBY ORDERED:**

1. For docket purposes, Plaintiff's Opening Brief, ECF No. 14, and Reply Brief, ECF No. 17, are **DENIED**.

2. For docket purposes, the Commissioner's Response Brief, ECF No. 16, is **GRANTED**.

3. The decision of the Commissioner is **AFFIRMED**.

4. Judgment shall be entered in favor of Defendant and against Plaintiff.

IT IS SO ORDERED. The District Court Executive is hereby directed to file this Order, provide copies to counsel, and **close** the file.

DATED this 19th day of July 2023.



A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
Chief United States District Judge